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GERMAN CONSTITUTIONAL LAW IN ITS RELATION TO THE AMERICAN CONSTITUTION.

IN studying the excellent book of the new President of Harvard University on the government of England, the reader will have a great impression of the almost inextricable complexity of the modern state. Most people, even while taking part in public life, scarcely become aware of the true internal life of this immense body, as members of which we are daily working. It is such a fact as we may observe in regarding a physical organism.

Every man has a superficial knowledge of his own corporal structure. He knows not only that he wants his feet for walking and his hands for grasping, but he has also an idea more or less clear of his invisible organs for breathing and digesting, of his nerves as instruments for accepting impressions and giving out movements, of his brain as an indispensable machine for thinking. But to have an exact science of the astonishingly complicated structure from infinitely small elements, by which nature makes possible this work of individual life, he must study many years with books and with the microscope. He will make use of his organs accurately and perfectly, yet he may or he may not know anything about all this. But if there occurs a disturbance in the working of his organs, he goes to the physician, and will trust most to the man whose science of the occult mysteries of organic life is the deepest.

The social bodies, and mainly the state which overwhelms them all, are indeed complicated to a higher degree than is the physical organism. They are the most admirable work of mankind. History formed them in the course of centuries. Partly by reflecting will, but in greater part by unconscious working, many generations have produced the invisible buildings we dwell in. Everybody knows by instruction the outlines of the state, and by experience forms nearer acquaintance with those parts of the edifice he inhabits or passes through. But nobody can perceive the whole nor conceive the structure of every part and the connection between the one and the other.

Even if he could do so, he would have only a conception of the mere mechanism by which social life operates. But the state is no dead mechanism which receives its movement by a force coming from outside. It is a living being, an organism, whose life rises from its own powers and is directed by its own soul. Each member of the nation, be he official or ordinary citizen, has to do with this life and is one of the working components of its unity. But in practical life he will gain but a vague impression of the immanent vitality and powerful unity itself. It is the difficult task of political and legal science to seek the true sources of common life and activity, by penetrating the whole, by analyzing the complicated detail, and by revealing the general rules, the thoughts and principles manifested in the single phenomenon. The genuine object of scientific treatment is here as everywhere the discovering of truth. But theory will also do a useful work for practice, if it promotes the understanding of the organic nature of human societies and awakens the conscience of the profitable and harmful effects of individual activities in the complex life of the whole.

There is, besides this complexity in structure, another analogy between social and physical bodies, which strikes the mind of the attentive observer. It is the manifoldness of varieties, developed in history. Surely we find not only the same elements, but also certain general forms of structure, in all kinds of human societies, as in all kinds of animals or plants. But the differences between them are nevertheless perhaps greater than between a bird or a fish, or between an oak and a rose. This will be found true not only in comparing the great organism of state or church with any private corporation, union, or association, but also in contemplating the mighty commonwealths of the modern world for themselves.

It will not be astonishing if we remark sharp contrasts in the organization and internal life of empires whose inhabitants belong to different races, as Russia and France, or China and Spain. There is naturally much greater similarity between the states of European type. All had the same origin. Their foundations were set up in the Frankish period; their development in medieval times depended upon the principles of the feudal system and was influenced by the ideas of the universal Roman Empire and the universal Roman Church; their transmutation into modern forms was achieved not without help from the renaissance of political thoughts of Greek

and Roman antiquity. Thus to-day they must also of necessity be characterized by many identical features. Yet how fundamental is the difference between the public institutions and, widely more, the public life of the nations of Teutonic and of Latin origin! The states, formed exclusively or mainly by Teutonic people, have surely retained much of the original common standard and spirit. But nevertheless the contrasts between them are very much stronger than, on the other side, the contrasts between the single realms of the Latin type.

To the Teutonic states belong three great world powers: England, the United States, and the German Empire. There are still other formations of the same origin, which have for us in the point of historical differentiation a keen interest, — Netherlands, the three Scandinavian kingdoms, the Republic of Switzerland, which, though including some Latin cantons, is essentially a German product, Austria, the German origin of whose constitutional law cannot be contested. What a wealth of variety is suggested to our minds by the mere pronunciation of these names! But let us confine our short survey to the three first-mentioned commonwealths.

England and the United States have, no doubt, a strict similarity, as should be the case between mother and daughter. Thus the structure of their public life exhibits from many standpoints a uniform aspect, which is wholly opposite to the aspect presented by all peoples of the European continent. Perhaps the strongest bond which holds together old and new England is the common law, and with it the conception of law at all, whereon is based the whole community. For one like the writer, a teacher of law, the fundamental difference between Continental and English legal systems forms the widest gap between my own country and America. The fact that, while the peoples of the European continent, with few exceptions, — for example a part of Switzerland, — altered their native law by the reception of the written Roman law, the English world continued to conserve and build up its ancient home-law, distinguishes sharply the theoretical and practical character of public life on both sides. Nevertheless, even in this point the difference between Germany and America is less weighty than that between Germany and England, or between America and France. On the one side the German law was never wholly overrun by the Roman Code, and has in the last century experienced a powerful resurrection in private and still more

in public matters. In our universities there are separate chairs for teaching Roman and German law. On the other side the American development is nearer to the continental evolution than the English development has hitherto been. In America the law of nature has had a greater influence upon the formation of the existing institutions, and the aversion against codification of law has been less strong.

As a consequence, in America, as in Germany and the other countries of the continent, constitutional law is based upon fundamental statutes, while in England the constitution is not contained in any one single document. Surely also in America, as in Germany, custom and convention supplement the paragraphs of the written constitution and produce in time many changes unforeseen by its framers. Note the mighty influence of parties on government, yet no constitution says a word about party. But the written constitution stands on a higher plane and is for each citizen of America a thing almost holy. Also in Germany the written constitutions are guaranteed by promissory oaths of the sovereign, the officials, and the deputies. In America the constitution is inviolable by the legislature, and can be altered only by a very extraordinary procedure which is not often set in motion. In Germany constitutional amendments are more easily and more frequently made. Yet in Germany also there is prescribed a particular form of procedure for all such amendments. We have not different organs for constitutional law making, but a larger majority of the legislature, or at least, as in Prussia, a longer period of deliberation, is required.

The greatest resemblance between German and American public institutions is to be found, no doubt, in the fact that in both countries there exists a federal organization of the state power. While in England the whole sovereignty is concentrated in a King and Parliament, and the divisions of the country are only communities with delegated power, in Germany, as in America, there is a double system of state life. The German Empire — unlike the former German confederation dissolved in 1866 by war and violence — is a true state, to which every German is immediately subject. But the single kingdoms and smaller monarchies and the three free cities, which compose the empire as its members, are also true states. They existed before they were united into a federal state and have not given up all their original power. Each has its own constitution,

fixed by its own people and completely intangible by the empire. In case of a conflict between the government and the representative bodies each part may, if a special court for the decision of such questions is not provided, bring the question before the organs of the empire.

The constitutions of the single German states are much more different the one from the other than are those of the American states.

There are three republics, the free "Hansastädte," Lubeck, Bremen, and Hamburg, whose sovereignty is exercised by a great council immediately elected by the citizens, the "Bürgerschaft," and a narrower council elected by this "Bürgerschaft," the "Senate," whose head is the yearly changing "Bürgermeister." Both assemblies together possess the legislative power, while the executive power is lodged in the "Bürgermeister" and "Senate," controlled by the representative assembly.

All the other states, to the number of twenty-two, are hereditary monarchies. In twenty of them the monarchical power is limited by a modern representative organ, that is to say, a "Volksvertretung," or a parliament. In the greater states this is divided into two separate houses after the pattern of the English House of Lords and House of Commons. In Prussia there is a "Herrenhaus" and a "Haus der Abgeordneten"; in Bavaria, a "Kammer der Reichsräte" and a "Kammer der Abgeordneten"; in Saxony, Würtemberg, Baden, and Hessen, a first and a second chamber. The upper house is a more or less aristocratic element of the representative organ of the people; the members are appointed or elected in very different ways, partly by nomination of the Crown, partly by election of Town-Councils, Universities, other corporations or electorates, partly by the union of a seat with an hereditary or personal dignity. The second chamber in all these states is elected by the whole people and forms a democratic element. But there are strangely different systems of election. In Prussia the right of voting belongs to every citizen; but the voters of every district, called the "Urwähler," are divided into three classes according to the size of their taxes, each class paying one-third of the taxes levied in the electoral district. Each class chooses the same number of electors, called "Wahlmänner," and the electors meet in one assembly for choosing the two or three deputies of the "Wahlkreis." Thus the election is indi-

rect, and is performed, not by ballot, but by open declaration. In Saxony there has been introduced within the last year a system of universal suffrage, modified by the system of plurality of votes; that is to say, individuals may have more than one vote each, the number of votes depending upon landownership, higher education, and the payment of taxes above a certain amount. The southern states of Germany have in recent years conceded the right of universal, equal, direct, and secret voting. In all these constitutional monarchies the Prince is the representative of the sovereignty. But the legislative power cannot be exercised by him without the consent of both houses. The executive power lies in his hands, but he is forced to perform every act of government with the assistance and the written assent of a minister, who is charged with personal responsibility for it. The whole administration, and especially the income and expenditure of the public treasure, are under the control of the chambers.

In most of the smaller states the constitution is built upon these same principles, except that there exists only a single chamber, some of whose members must be appointed in a manner other than that of general election. But there are two states without any modern constitution: the two Grand-Duchies of Mecklenburg. Here the monarchical power is limited by a corporation of the ancient "Landstände," which are composed of the proprietors of the great landed estates, "Ritterschaft," and the magistrates of the greater towns, "Landschaft," all holding their seats in their own right. Furthermore, the ancient and peculiar character of these two states is illustrated by the fact that both of them, each having its own sovereign, preserve an old "landständische Union"; that is to say, they have in common only one popular council.

All these single states have full power in the matter of changing their constitution. They have also full power in the matter of their territorial basis. They may alter their boundaries by treaties with the neighboring states. The Empire can make no changes in their territory, except in the case of making peace after an unlucky war. But if the alteration of the boundaries would also alter the boundaries of the Empire, there is necessary a double act of legislation by the state and by the Empire.

Unlike the American commonwealths, the states have also retained the position of international persons. They are, it is true, deprived of the right to make war and peace. But they can make interna-

tional contracts, not only with another member of the Empire, but also with foreign states. They can also send and receive diplomatic agents to and from foreign powers, while the right of sending and receiving consuls is wholly reserved to the Empire.

In all matters not covered by the imperial power they have, like the American commonwealths, an independent legislative, executive, and judicial power. But in a wide field — wider than in the American Union — the states are strictly bound by the legislation and the control of the Empire. In these things they have only, as one may say, the position of bodies for self-government. In the matters with which the Empire does not deal they exercise full sovereignty. Examples of such matters are the organization and control of the smaller communities, villages, towns, districts, provinces; many matters of police; railways and public roads; agriculture and agrarian affairs; mines; waters; hunting and fishing; the whole work of education, elementary schools, secondary instruction, high schools, universities, academies of science and of art; also all matters of church. It is an important field, wherein each state may exercise its own legislative, administrative, and judicial power without any intervention from a higher authority.

Besides the states, the German Empire includes other members of different character.

There is the Reichsland, Alsace-Lorraine. This is not a state, because the governmental power does not reside in the Reichsland itself, but in the Empire. The rights, elsewhere belonging to the particular sovereign, are in the Reichsland exercised by the organs of the Empire, and are partly delegated to an imperial "Stadthalter," residing at Strassburg, who, like a monarch, is obliged to govern by responsible ministers. But though it is not a state, the territory is endowed with self-government, which in the course of time has increased more and more. It possesses a representative body, the "Landesausschuss," whose consent is indispensable for every act of territorial legislation, and by which the budget of the territory is fixed and controlled. The Reichsland has been compared with the American territories. Indeed, there is much resemblance. Also, as in the case of most territories, the Reichsland is ambitious to become a state. But the difficulties in achieving this end are almost insurmountable. To become a state, the Reichsland must either be endowed with a new dynasty or be elevated to a republican common-

wealth. Now the one of these alternatives is excluded by the jealousy of the existing dynasties, and the other by the prevalence of monarchical tendencies in Germany.

The Empire possesses, further, a number of colonies. But the very interesting study of the organization and the government of these colonies in comparison with the English, and now also the American colonial, system must be omitted in this short article.

The Empire itself is the great superior state, built upon and above all these subordinate commonwealths. The Empire has an organization without pattern in any other country. But the general nature of the federal state produces some analogies with the structure of the United States.

The immediate organs of the German Empire are the "Kaiser," the "Bundesrat," and the "Reichstag," to which may be added the "Reichsgericht."

The head of the Empire is the Kaiser. But the Kaiser, as Kaiser, is no monarch. He has, no doubt, the personal prerogatives of a monarch, enjoys the honors of a crowned head, and is not responsible for his acts before any court. But he is the equal, not the superior, of the other German princes, the first among peers. He exercises the rights of a sovereign, not only in his own name, but in the name of the United Princes and Free Cities, as the collective sovereign of the Empire. And he is far from possessing full monarchical authority. His part in legislation is limited to the promulgation and publication of the bills agreed upon by the Bundesrat and Reichstag. He has not the limited veto of the President of the United States; he has no veto at all. He is the chief of the military and naval forces of the Empire. But the army is not, as is the navy, a strictly united body. It is composed of contingents from the single states. Of these contingents the Bavarian is a separate army, which only in case of war stands immediately under the command of the Kaiser, while in peace the King of Bavaria is its highest commander. Also the Kings of Saxony and of Würtemberg enjoy most of the rights of command over their contingents. The other chiefs of contingents have by several conventions, provided for in the constitution of the Empire, ceded almost all their rights, not to the Kaiser as Kaiser, but to the King of Prussia. The administration of naval affairs is a matter that belongs to the Empire and is directed by the Kaiser and his admiralty. But as to the army the military administration belongs

to the states, and is performed by the four ministers of war in Prussia, Bavaria, Saxony, and Württemberg.

The Kaiser represents the Empire as against the foreign states. He sends and receives the diplomatic agents and the consuls, he ratifies the international treaties of the Empire, he has the rights of declaring war and of making peace. But if the treaties concern a subject of imperial legislation, for example trade, navigation, or private law, he is obliged to obtain the consent of the Bundesrat and Reichstag. And to declare war he needs the assent of the Bundesrat, except in the case of a hostile invasion of the territory of the Empire.

As to the civil administration, the Kaiser is charged with the execution of imperial acts passed by the Bundesrat and Reichstag and of the resolutions of the Bundesrat, and with overseeing the administration in the states in so far as the execution is intrusted to the states. But, unlike the President of the United States, he is not his own minister and he is not responsible in his own person. He has to appoint a responsible minister, whose written assent is required for the validity of every measure of imperial government, matters of military command excepted. This minister is the Chancellor of the Empire, the "Reichskanzler."

The Reichskanzler has a most important legal position, much higher than that of the Prime Minister in constitutional monarchies. There exist, it is true, many high offices of the empire, called "Reichsämter," to which are intrusted particular branches of the administration. There are Reichsämter for foreign affairs, for the navy, for internal government, for justice, for post and telegraph, for the treasury, for the colonies, etc. But the chiefs of those offices, called Secretaries of State, are only *quasi*-ministers. They are all subordinate to the Reichskanzler. They have a responsibility of their own, but their responsibility is limited by the nature of their department, while the Reichskanzler remains responsible for the whole. The Kaiser has further the right to summon the Bundesrat, and to summon, prorogue, close, or dissolve the Reichstag. But also in these functions his power is limited by strict constitutional rules. The right of dissolving the Reichstag he can only exercise with the consent of the Bundesrat, and a new Reichstag must be elected within a period of sixty and convened within a period of ninety days.

Thus the executive power of the Kaiser is far from being that of

a plenipotentiary. It is, however, more complete in the Reichsland and in the colonies, because here the exercising of the whole governmental power within the limits set by law is vested in the Emperor acting with the Reichskanzler.

The legal attributes of the German Emperor are much narrower than are those of the American President. The President is for four years invested with the almost absolutely arbitrary direction of the executive power. He is together head of the Union, whose majority he represents in the relations to other nations and to the single states, chief of the navy and of the army, and, if I may say so, Reichskanzler or Prime Minister. The cabinet he forms is only the instrument of his will. Nevertheless the position of the German Kaiser is not only higher in rank, but gives him also a greater influence on politics. But that is the effect, not of the constitutional functions attributed to the Kaiser as Kaiser, but of the legal union of the imperial Crown with the Crown of Prussia.

If the Emperor were elected, as the Emperor of the former holy German-Roman Empire used to be elected, and the votes should be given perhaps for a prince of Reuss or Lippe, his position would be intolerably weak. Now the constitutional law, by which the imperial dignity is inseparably annexed to the Prussian kingdom, alters the situation completely. The Emperor is not only head of the Empire for life, but the crown is inherited by his descendants. Every Emperor is the born representative of the united nation. Every Emperor is also the born sovereign of that one of the German states which is not only incomparably the greatest, but is endowed with a legal hegemony and is to be called the "Empire State," in a much more strict sense than is the State of New York. The Kaiser may thus confer the office of Reichskanzler and that of Prime Minister of Prussia on the same person, as he always has done, except during a short period of a few months. And as Prussian king he is also the president and the mightiest member of the second great organ of the Empire, the "Bundesrat."

The Bundesrat is the most peculiar organ of the Empire. We cannot compare it with any political body in any other country. To be sure, it takes the place which in the United States belongs to the Senate. Like the Senate, the Bundesrat is composed of the single states, and its functions are partly those of an upper house. But its structure is far from being that of a parliamentary chamber. The

members of the Bundesrat are not elected deputies, but plenipotentiaries of the single states. They may not vote according to their own conviction, but are charged with the duty of the votes of the states themselves. Thus they are appointed by the sovereigns of the separate states, and receive from them their instruction how to vote. Their "Yes" or "No," once given, is incontestable. But they are responsible to those who gave them their authority. By whom and how they are to be instructed is a matter of constitutional law in every single state. But for the Empire there exists only the fact that the mandatary is authorized by an act of the legal sovereign of his home state, and his legitimization is examined and approved by the Bundesrat itself. Thus the Bundesrat is in an eminent sense a federal organ of the Empire. It is the instrument by which the particular states, as organized bodies, arouse their membership of the general body to activity and gather their separate wills into a common will of the whole.

In accord with this the Bundesrat is invested with a large authority. One may say that it has to exercise all the rights of the collective sovereign of the Empire, as far as they are not transferred to the Kaiser. The Bundesrat participates, like the American Senate, in every legislative act. Every imperial bill, every "*Reichsgesetz*," requires uniform resolutions of the Bundesrat and the Reichstag. But the Bundesrat is at the same time invested with the highest executive power in all imperial matters. It is a supreme council of government. Its resolutions furnish the rules for the administration of government by Kaiser and Reichskanzler and the higher and lower officers of the Empire. The constitution provides for nine standing committees of the Bundesrat (*Bundesratausschüsse*), which are charged with the preparation and carrying out of its resolutions in the various departments of the government.

The Bundesrat decides by majority of votes. But the number of votes assigned to the single states is not equal. The number is fixed from an historical point of view, in conformity with the number of votes in the former Bundestag of the German confederation. Were it measured by the amount of population, Prussia would have a majority for herself alone, because she comprises almost two-thirds of the whole German people. Thus this institution, in spite of its name "*Bundesrat*," would be a mere sham. Now Prussia has only seventeen votes out of fifty-three, while Bavaria has six, Saxony and

Württemberg four each, some states three each, some others two, and the smaller states one each. Prussia may thus be overwhelmed by a majority. But this is not possible in military matters and in most matters of taxation, as regards which no alteration of the law can take place against the vote of Prussia. Further, no amendment of the constitution can be made if a minority of fourteen votes is opposed to it. Thus Prussia by herself has a veto upon every alteration of the constitutional law. But the same veto is conceded to any group of smaller states, if they have together fourteen votes, in particular to the three other kingdoms, whose votes reach together exactly the number of fourteen. Finally, the consent of each state is required when her special rights, guaranteed by the constitution, would be affected by a resolution.

The third great organ of the Empire is the Reichstag. Its formation corresponds with the formation of the House of Representatives in the United States. The deputies are chosen by universal, equal, direct, and secret election. Every German above twenty-five years of age has the right to vote, saving the exceptions usual in all countries, — disabilities resulting from crime, insanity, receipt of poor relief, etc. Every German means every male German. Woman suffrage has in Germany fewer chances for success than elsewhere, because we regard the voting right as an equivalent for military duty, which in Germany binds every citizen and does not affect women.

The Reichstag has all the functions of a representative body in a constitutional monarchy. It takes part in the legislature and controls the whole administration. It is, like the Kaiser, a strongly national organ of the Empire, for which the division of the nation into states is immaterial. The Reichstag is a "*Volksvertretung*" of modern character throughout.

The Empire possesses, too, an organ for judicial power in the Court of Empire, the "*Reichsgericht*," residing at Leipzig. This high court gives its judgments in the name of the Empire. It has final jurisdiction in questions of criminal and civil law. But its authority does not extend to constitutional questions as such. In this respect there is a great difference between German and American institutions. In the opinion of the writer it is a fundamental deficiency of our public law that there exists no protection of constitutional principles by an independent court of justice. It is no sufficient substitute that the Bundesrat is charged with a sort of international or

interstate jurisdiction as between the various states, and the Bundesrat and the Reichstag with authority to interfere in constitutional conflicts in a single state. In Europe the conviction of the omnipotence of the legislature prevails, so that the judges are obliged to obey every legislative measure enacted in legal form. Thus as against a "Reichsgesetz" no appeal to any court can bring help in the case of violation of constitutional rights. The courts dare not apply the statutes of the single states if they run counter to a Reichsgesetz. For "Reichsrecht" breaks "Landesrecht." But if that be not the case, the state legislature is also omnipotent, and its measures cannot be invalidated by a court. Only against measures of the administrative organs, however, the rights of individuals and communities in matters of public law are protected by judgment. But instead of the ordinary courts, special courts for administrative law, called "Verwaltungsgerichte," deal with such questions. Such courts exist in almost all German states. The Empire lacks a general court of this character, but it possesses some courts with judicial functions in regard to certain kinds of administrative questions. For example, a "Bundesamt für das Heimatwesen" for decision of questions of settlement for the support of the poor, the Patent Office (Reichspatentamt) for inventions, the "Reichsversicherungssamt" for adjudication of questions of the legal insurance of laborers, etc.

Thus the German Empire is a great commonwealth with her own powerful organs. It rules immediately all German citizens, so far as the sovereignty is not reserved to the single states, and it controls the states, so far as they are subject to the central power. That is wholly the same as in the United States. But in Germany the central power is much greater than in America. The principal difference lies in the much larger authority of the central legislative power. In Germany not only the regulation of trade, manufacture, labor, navigation, busses, banks, insurance, copyright, and almost the whole of economic life is an imperial matter, but the Empire is also empowered to legislate upon all questions of civil law, criminal law, and law of procedure. Indeed the Empire has framed a code of criminal law, a code of criminal and a code of civil procedure, a code of commercial law, and since the year 1900 a code of private law, by which uniformity of law in the whole country is substantially effected, and only a narrow field is reserved for state legislation in

these matters. The legislature of the Empire has also regulated the conditions of acquiring and losing citizenship in a single state, with which is immediately joined the citizenship of the Empire. Thus it is largely a difference of form, that, while in America the citizenship of the state depends upon that of the Union, in Germany the "Reichsangehörigkeit" is the consequence of the "Staatsangehörigkeit." Furthermore, statutes of the Empire regulate all military duties, rights, and substitutions.

The Empire is exclusively entitled to impose customs on imported and exported goods, and taxes on tobacco, sugar, salt, brandy, and beer, and has besides, concurrently with the states, the right of levying taxes upon income, property both real and personal, and inheritance. Hitherto the Empire has not introduced direct taxation in its strict sense, so that the taxes upon income, wealth, and industrial occupations are reserved to the states, and that upon real estate to the local communities. But the Empire has already established many taxes which are nearly direct in nature, mainly stamp taxes and a tax upon inheritance. Within the past year Germany experienced a great struggle relating to the reform of the finances of the Empire, which ended in rejecting the proposal to levy an inheritance tax even upon properties devolving upon husband or wife and children. So far as the income of the Empire from taxes and the profits of governmental departments are not sufficient for the expenditures, the deficit is covered by contributions of the single states, called "Matrikularbeiträge."

The legislative power of the Empire extends, as already remarked, much farther than its executive and judicial power. The direct imperial administration as such is limited to certain departments, such as foreign affairs, navy, post, and telegraph, the bank of the empire, etc. But the administrative offices of the states must, in all departments which are subject to the legislation of the Empire, act in accordance with the imperial statutes and the regulative orders given by the Bundesrat, the Kaiser, the Reichskanzler, or a specially authorized Reichsamt. Thus in raising customs and taxes for the Empire, in military administration, in coining, in sanitary measures, in overseeing busses, manufactures, etc. Except in cases of high treason against Emperor or Empire, the judicial power of the Empire is appellate only, that is to say, so far as an appeal to the imperial court at Leipzig is permitted at all. But all courts of the states have

to observe the form of procedure prescribed by the Empire and to apply the law enacted by imperial legislation.

There is to be mentioned a peculiarity of the German constitution unknown to the American federation. This peculiarity is seen in the reservation of rights by certain states, mainly by Bavaria, and in lesser degree by Württemberg and Baden. We have already spoken about the independence of the Bavarian army. Bavaria and Württemberg have their own posts and telegraphs. The three states mentioned enjoy exemption from the taxes laid upon beer by the Empire, and levy these taxes for their own public treasury. This is a keenly important privilege for Bavaria. Bavaria is also exempt from the poor law of the Empire. There are some other privileges, too numerous to be enumerated here. All these exemptions and prerogatives are jealously upheld and guarded by the states that possess them. It is manifest that those special state rights must have an influence also upon the budget of the Empire, and make necessary a very complicated annual financial reckoning.

Throughout the brief history of the German Empire there may be observed a permanent growth of the central power and a steady progress toward unification of the law. As we say in Germany, "the tendencies toward unification prevail over the tendencies toward federalism." Nevertheless, there is no doubt that the decentralizing forces are yet strong enough to maintain the equilibrium in the future, so far as we can foresee.

The writer has tried to draw a sketch of the German constitutional law. But the constitution is only the framework of the public life. There is much that might be said about the practical working of the constitution. This, however, cannot here be attempted.

Germany and America differ from England and many other countries in not having a parliamentary government. In Germany neither the Reichstag nor the popular assemblies of the single states rule by a cabinet representing their majority. To be sure the legislative houses are important factors in public life, which could not go on without their legislative and controlling functions. But neither the Emperor nor the sovereigns of the states are obliged by law or by convention to choose their counsellors from the majority in Parliament. The responsibility of the Reichskanzler is only a political one. It is the same with the ministers of Prussia, and really, too, with the ministers of the smaller states, though in many of these an impeach-

ment of ministers for misdemeanor is provided for by constitutional law. In truth, the cabinet is nowhere able to govern without gaining and holding a parliamentary majority. If not possessing a majority, it is at length compelled to resign or to dissolve. But while the cabinet retains office, it is independent of parliament and parliamentary parties.

In America, too, the government is not a parliamentary one. The President of the United States is not the trustee of Congress nor of one of the houses. He is the immediate trustee of the sovereign nation. It is the same with the governors of the single states. They are chosen by the will of the people, and, once in office, may remain there, although the majority of the representative body belongs to the opposite party.

In spite of the fact that parliamentary government is unknown in both countries, a marked difference between American and the German public life is produced by the unequal influence of parties in the two countries.

In America, that person who is for a few years the head of the state is in a certain sense elected by a political party. For it is really the convention of a party which chooses the candidates who have any chance of election. And the electors, if they use their votes effectively, must cast their ballots for one or the other of the party candidates. Such party government is possible, because here, as in England, there exist only two great historic parties, strongly organized and continually struggling for victory, — the smaller parties lately formed not yet having sufficient importance effectively to influence the result. Thus the government is, no doubt, a party government. The head of the state is bound to a party. The leading officials and many of the subordinates are taken from the ruling party and removed in case of change.

In Germany the Reichskanzler and the ministers are appointed by the hereditary heads of the Empire and of the states. It is assumed that the King stands above parties. He has to represent the whole of the nation by inherent right. His authority is not conferred upon him by a majority of the people, but is founded on the historical connection between the dynasty and the country. Now the high officials of the commonwealth, deriving their authority from the crown and called to execute the will of the monarch, are expected also not to be party men, or, at least, not strictly party men. Also for them party interest has to vanish. Even if formerly belonging to

a party, a Reichskanzler or a minister has to conduct himself as if he were not a party man.

Indeed, a party government in Germany would be nearly impossible. We have plenty of parties, none of which can hope to gain a parliamentary majority for itself. We have Conservatives and Liberals in various colors, we have also a great Catholic party, and a dangerous party of social democrats. Thus the majority in each special case may be formed by a different party combination. Such parties as we have now in Germany are not capable of governing. Therefore the German government is still carried on to-day, as it was in the time of absolutism, mainly by men who belong to the class of standing officers. The prevailing force in German public life is the activity of learned men, who are educated and trained for the public service, serve the state for life, and devote all their thought and effort to the public weal. The Reichskanzler and the ministers are not necessarily, but are ordinarily, chosen from this great body of officers. In this case they retain their official character, only they are elevated for a time to higher rank and charged with special duties. In every case such men seem to be the leading members of the official class. Thus instead of a party government we have in Germany a bureaucratic government, modified by the influence of popular parties. The German bureaucracy has not abdicated. Also it has preserved its inherent virtues. Many people think it has retained too many of its immanent faults.

The differences between the two great federative commonwealths of America and Europe are, therefore, fundamental, and must be evident even to a superficial observer. But the writer hopes that it will have been seen that, in spite of the inevitable contrast between republican and monarchical institutions, there exists also a surprising resemblance and many accordant features.

We have forgotten since the time of our fathers to put the question, once discussed as the fundamental problem of political theory, Which constitution is the best one? We believe no more in a natural law that should be revealed by the human reason and would prescribe a rational constitution fit for every people in every epoch. Thus in comparing the public law of different countries we endeavor no longer to discover any absolute superiority of either of them, but we ask only whether the constitutional law of each country accords with its public feelings and wants.

And that is, in the opinion of the writer, at last the greatest similarity between American and German public life, — that on both sides of the ocean people regard their constitution as the emanation of national spirit and the guarantee of national weal. Germans and Americans attribute in a high degree the rapid growth of culture and material well-being in their countries to the powerful unity, saved in America, and created in Germany, by blood and iron in a civil war, and typified in each case by a great man, your Lincoln and our Bismarck. Germans and Americans both acknowledge the benefits of the federal system, which prevents the proper life of parts being swallowed up by that of the whole, and protects sound decentralization and vigorous self-government. They have an abiding sentiment for the historic ground they stand on. Thus we may hope that the progress of national life will be secured by developing constitutional law by constitutional ways and means without new revolutionary crises. We may also hope that the common origin of peoples, the affinity of public institutions, and the harmony in political views will contribute to the growth of the friendly relations between the great Republic and the mighty Empire, and of intimate sympathy between the two nations.

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